SUBRAMANYAN SANNASY A

v.

SAC II SYED ALWI SYED HAMID & ANOR

COURT OF APPEAL, PUTRAJAYA B
ZALEHA ZAHARI JCA
HELILIAH MOHD YUSOF JCA
KN SEGARA JCA
[CIVIL APPEAL NO: J-01-50-2004]
2 JUNE 2009 C

POLICE: *Disciplinary proceedings - Dismissal - Dismissal pursuant to court conviction of criminal offence - Reference to reg. 38(g) of Public Officers (Conduct and Discipline) Regulations 1993 apart from regs. 33 and 37 in dismissal letter - Whether a procedural irregularity rendering dismissal null and void* D

The appellant, a police officer, was convicted of an offence under s. 222 of the Penal Code for falsifying documents to secure the release of 3 Indonesians from a police lock-up. The appellant did not appeal against his court conviction. It subsequently followed that the appellant was dismissed from the police force under reg. 33, 37 and 38(g) of the Public Officers (Conduct and Discipline) Regulations 1993 ('the Regulations'). This appeal stemmed from the appellant's suit against the respondents in the High Court to declare his dismissal null and void. The issue raised in the appeal was whether the reference to reg. 38(g) of the Regulations in the dismissal letter to the appellant was a procedural irregularity and not in accordance with the procedure laid down under regs. 33 and 37 of the Regulations. The case of *Perbadanan Kemajuan Negeri Selangor Petaling Jaya, Selangor Darul Ehsan & Ors v. Perumal Manikam* was cited in support. E F G

Held (dismissing the appeal)
Per Heliliah Mohd Yusof JCA delivering judgment of the court: H

(1) In the case of *Perbadanan Kemajuan Negeri Selangor Petaling Jaya, Selangor Darul Ehsan & Ors v. Perumal Manikam*, the Court of Appeal had evaluated a position where the dismissal was effected pursuant to a provision that did not deal with dismissal but reduction in salary. Hence it was clear that the I

A disciplinary authority therein did not comply with the relevant provisions of the then Public Officers (Conduct and Disciplinary) (Chapter D) General Orders 1980. As such, that case was distinguished. (para 6)

B **(2)** Regulation 33 of the Regulations was an enabling provision where it was incumbent on a head of department to submit a recommendation to the relevant disciplinary authority in a situation where an officer had been convicted as a result of criminal proceedings. The contents of the dismissal letter C indicated that the disciplinary authority had acted pursuant to reg. 37 of the Regulations that was the appropriate provision to impose the punishment of dismissal. The said letter had made a specific reference to reg. 37. The reference to reg. 38 did not amount to the disciplinary authority acting without D jurisdiction. The scope of the regulations indicated that reg. 33 was only one of the provisions where the disciplinary authority was empowered to determine the appropriate punishment to impose. Implicit in reg. 33 was that the conviction and sentence imposed by a court of law by itself constituted a E breach of the code of conduct or misconduct. (para 6)

(3) The Regulations constituted the corpus of regulations promulgated to regulate the conduct and discipline of those serving in the public services. While reg. 38 used the term F "offence" and the words "... finds an officer guilty of contravening any of the provisions of these regulations", it was a general description that in the event of the violation of any conduct laid down that amounted to an offence, the relevant disciplinary authority under reg. 38 was generally vested with G the power to exercise its discretion to determine the form of punishment to be imposed, befitting the circumstances of each contravention of the regulations. In the present case, the disciplinary authority in its totality had considered a matter and arrived at a decision in accordance with the procedure laid H down by the regulations. The appellant also failed in his allegation that the disciplinary authority had not purportedly directed itself to appreciate directory or mandatory provisions found in the regulations. The reference to reg. 38 was a mere surplus that did not constitute an error in jurisdiction or an I absence of exercise of discretion. (para 7)

Bahasa Malaysia *Translation Of Headnotes*

Perayu, seorang pegawai polis, telah disabit dengan kesalahan di bawah s. 222 Kanun Keseksaan kerana memalsukan dokumen untuk membebaskan 3 orang Indonesia dari tahanan lokap. Perayu tidak merayu terhadap sabitannya. Ianya mengikut bahawa perayu kemudian telah dibuang kerja dan disingkir dari pasukan polis di bawah per. 33, 37 dan 38(g) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) 1993 ('Perintah'). Rayuan di sini berbangkit dari guaman yang difailkan perayu terhadap responden di Mahkamah Tinggi bagi mengisytiharkan pembuangan kerjanya sebagai tak sah dan batal. Di rayuan semasa, isu yang dibangkitkan adalah sama ada rujukan kepada per. 38(g) Perintah di dalam surat pembuangan kerja merupakan satu ketakteraturan prosedur dan tidak selaras dengan prosedur yang ditetapkan di bawah per. 33 dan 37 Perintah. Kes *Perbadanan Kemajuan Negeri Selangor Petaling Jaya, Selangor Darul Ehsan & Ors v. Perumal Manikam* telah dikemukakan sebagai sokongan.

Diputuskan (menolak rayuan)
Oleh Heliliah Mohd Yusof HMR menyampaikan penghakiman mahkamah:

(1) Dalam kes *Perbadanan Kemajuan Negeri Selangor Petaling Jaya, Selangor Darul Ehsan & Ors v. Perumal Manikam*, Mahkamah Rayuan telah menimbang keadaan di mana pembuangan kerja dibuat di bawah peruntukan yang bukan berkaitan dengan pembuangan kerja tetapi dengan pengurangan gaji. Oleh itu jelas bahawa jawatankuasa disiplin di situ telah tidak mematuhi peruntukan-peruntukan tertentu Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980. Kes tersebut dengan itu boleh dibezakan.

(2) Peraturan 33 Perintah adalah suatu peruntukan pembolehan di mana menjadi kewajipan seorang ketua jabatan untuk mengemukakan cadangan kepada jawatankuasa disiplin yang relevan dalam keadaan di mana penjawat awam tersebut telah disabitkan ekoran suatu prosiding jenayah. Kandungan surat pembuangan kerja menunjukkan bahawa jawatankuasa disiplin telah bertindak di bawah per. 37 Perintah yang merupakan peruntukan wajar untuk menjatuhkan hukuman buang kerja. Surat tersebut merujuk secara spesifik kepada per. 37. Rujukan

kepada per. 38 pula tidak bermakna jawatankuasa disiplin bertindak tanpa bidangkuasa. Skop Peraturan menunjukkan bahawa per. 33 hanyalah salah satu dari peruntukan-peruntukan di mana jawatankuasa disiplin diberi kuasa untuk menentukan hukuman sesuai yang hendak dijatuhkan. Tersirat dari per. 33 adalah bahawa sabitan dan hukuman yang dijatuhkan oleh sebuah mahkamah undang-undang dengan sendirinya menjadi suatu salahlaku atau pelanggaran terhadap kod tatalaku.

(3) Perintah adalah suatu ikatan peraturan yang digubal bagi mengawalselia kelakuan dan tatatertib mereka yang berkhidmat dalam perkhidmatan awam. Sementara per. 38 menggunakan terma "kesalahan" dan perkataan "... mendapati seorang pegawai bersalah kerana melanggar mana-mana peruntukan Perintah-Perintah", ia berbentuk pemerihalan umum yang bererti jika berlaku pelanggaran terhadap sebarang kelakuan yang disenaraikan yang berupa suatu kesalahan, maka di bawah per. 38 jawatankuasa disiplin yang relevan adalah pada amnya diberi kuasa untuk melaksanakan budibicaranya untuk menentukan bentuk hukuman yang hendak dikenakan, iaitu yang sesuai dengan keadaan setiap pelanggaran peraturan. Dalam kes semasa, jawatankuasa disiplin pada keseluruhannya telah menimbang suatu perkara dan mencapai suatu keputusan yang selaras dengan prosedur seperti yang ditetapkan oleh Perintah. Perayu juga gagal dalam dakwaannya bahawa jawatankuasa disiplin telah tidak mengarahkan pertimbangan mereka kepada peruntukan-peruntukan berbentuk arahan atau mandatori di dalam Perintah. Rujukan kepada per. 38 hanyalah suatu lebihan, dan tidak menjurus kepada suatu kesilapan bidangkuasa atau kealpaan untuk melaksanakan budibicara.

Case(s) referred to:

Perbadanan Kemajuan Negeri Selangor Petaling Jaya, Selangor Darul Ehsan & Ors v. Perumal Manikam [2000] 1 CLJ 745 CA ***(dist)***

Legislation referred to:

Penal Code, s. 222

Public Officers (Conduct and Discipline) Regulations 1993, regs. 33(a), 37, 38(g)

Rules of the High Court 1980, O. 14, O. 33

For the appellant - Karpal Singh (Sangeet Kaur Deo with him); M/s Karpal Singh & Co
For the respondents - Nizam Zakaria SFC; A-G's Chamber

[Appeal from High Court, Johor Bahru; Civil Suit No: 22-257-2003 (MT4)]

Reported by Usha Thiagarajah

JUDGMENT

Heliliah Mohd Yusof JCA:

[1] The appellant (the plaintiff in the High Court) instituted a suit in which the claim was that the dismissal of the appellant *vide* a letter dated 26 August 2002 by the first respondent (the first defendant in the High Court) is null and void and the appellant is still a police officer in the police force. It was agreed by the parties that the claim is to be dealt with under O. 33 and/or O. 14 of the High Court Rules 1980. The undisputed facts are as follows:

1. On 15 November 2000, a police report was lodged against the plaintiff for falsifying documents to release three Indonesian detained from the police lock-up in Batu Pahat.

2. The plaintiff was charged in court for an offence under s. 222 Penal Code and was convicted and fined RM1,500 in default to three months imprisonment. The plaintiff paid the fine and did not appeal against the sentence.

3. Pursuant to the said court conviction, the Head of the Plaintiff's Department submitted a report to the Disciplinary Authority recommending that disciplinary action for the purpose of dismissal be taken against the plaintiff under reg. 33(a) Public Officers (Conduct and Discipline) Regulations 1993 (the 1993 Regulations).

4. On 20 August 2002, the disciplinary authority owing to the seriousness of the offence committed by plaintiff decided to dismiss the plaintiff from the police force.

5. In the letter dated 26 August 2002, (the dismissal letter) the disciplinary authority after considering the fact of the conviction and the recommendation of the Head of Department dismissed the plaintiff pursuant to regs. 33, 37 and 38(g) of the 1993 Regulations.

[2] There is a single issue raised in this appeal. It is alleged that there has been occasioned an error in the decision making process, that is, a procedural irregularity leading to the appellant's dismissal. The root of that allegation is to be found in the letter dated 26 August 2002 (or dismissal letter) reproduced as follows:

Ibu Pejabat Polis
Polis Diraja Malaysia
80990 Johor Bahru
Johor Tel: 07-2254422

Ruj. Kami: (PR)RF/104687
Tarikh: 26 Ogos 2002

Lans Koperal Subramaniam a/l Sannasy
(RF/104687)
Ibu Pejabat Polis Daerah
Batu Pahat
Johor

Melalui:

Ketua Polis Daerah,
Batu Pahat

Hukuman Tatatertib – Buang Kerja

Adalah dimaklumkan bahawa Lembaga Tatatertib telah menerima laporan daripada Ketua Polis Daerah Batu Pahat, bahawa kamu Lans Koperal Subramaniam a/l Sannasy (RF/104687) telah dijatuhkan hukuman denda RM1500.00 i/d (3) bulan penjara (denda dibayar) bagi pertuduhan di bawah Seksyen 222 K.K. oleh Mahkamah Majistret Batu Pahat.

2. Pada menjalankan kuasa-kuasa tatatertib yang telah diwakilkan kepada Lembaga Tatatertib oleh Suruhajaya Pasukan Polis mengikut P.U. (B) 441 bertarikh 14.12.2000, saya SAC II Syed Alwi bin Syed Hamid, Pengerusi Lembaga Tatatertib setelah meneliti fakta sabitan bersama-sama Ahli Lembaga Tatatertib serta syor Ketua Polis Daerah Batu Pahat selaras dengan kehendak Peraturan 37, Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 dengan ini memutuskan kamu dikenakan hukuman 'BUANG KERJA' di atas sabitan Mahkamah tersebut selaras di bawah Peraturan 38(g), Peraturan-Peraturan Pegawai Awam (Kelakutan dan Tatatertib) 1993.

3. Hukuman buang kerja terhadap kamu berkuatkuasa mulai 20.8.2002 iaitu tarikh mesyuarat Lembaga Tatatertib, Kontinjen Johor di bawah Peraturan 38, Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

4. Sila akui penerimaan surat ini dengan menandatangani di ruangan yang disediakan. A

- sgd -
(Syed Alwi bin Syed Hamid) SAC II
Pengerusi Lembaga Tatatertib
Kontinjen Johor B

s.k.:-

Timbalan Pengarah Pengurusan (Tatatertib),
KPN (Perkhidmatan/Perjawatan),
KP JH (Rekod), C
KP JH (Bahagian Gaji), - Sila ambil tindakan ke atas gaji subjek
KP JH (Perkhidmatan/Perjawatan),
Unit Khas Komputer,
Batu Pahat FLTT 13/2001,
Fail perp/perk. D

[3] The detailed aspects of this dismissal letter have been considered by the learned trial judge. The dismissal letter has made specific reference to the sentence imposed upon the appellant following upon his conviction for an offence preferred E against him under s. 222 of the Penal Code. No appeal has been lodged against the conviction. It is pertinent to note that the relevant regs. 33, 37 and 38 of the Federal Constitution Public Officers (Conduct and Discipline) Regulations 1993 (or Regulations 1993) being considered in this appeal are regulations which have F since been replaced. The provisions of reg. 33 as it was applicable then states:

33. Where criminal proceedings against an officer result in his conviction, or where his appeal against conviction is dismissed, G the Head of Department shall apply to the Registrar or Senior Assistant Registrar of the court for a copy of the court's decision. Upon receipt of the decision, the Head of Department shall send it to the appropriate Disciplinary Authority that has the power to impose a punishment of dismissal or reduction in rank, together with the record of service of the officer, and shall recommend H whether the officer should:

(a) be dismissed or reduced in rank;

(b) be imposed with any punishment other than the punishment of dismissal or reduction in rank; I

(c) have his service terminated in the public interest; or

(d) not be imposed with any punishment,

depending on the nature and seriousness of the offence committed in relation to the extent the officer has brought disrepute to the public service.

[4] The contents of the dismissal letter disclose that the disciplinary authority in question having received a report from the Chief Police Officer Batu Pahat together with a recommendation therein then made a determination that the appellant is to be dismissed in accordance with the provisions of reg. 37 and consistent with reg. 38 of Regulations 1993. The appellant has taken issue with the part of the letter that states 'dengan ini memutuskan kamu di kenakan hukuman "Buang Kerja" di atas sabitan mahkamah tersebut selaras di bawah Peraturan 38(g), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993'. In the High Court it has been the submission of the learned counsel for the appellant that the issue in question is whether the dismissal has been effected in accordance with the procedure laid down under reg. 33 of the 1993 Regulations which in turn would entitle the disciplinary authority *inter alia* to dismiss the officer. Regulation 37 as it was then provides, *inter alia*,:

37(1) Where, after considering the report and the recommendation of the Head of Department forwarded in accordance with regulation 33 or 36, the appropriate Disciplinary Authority is of the opinion:

(a) that the officer should be dismissed or reduced in rank, the Disciplinary Authority shall forthwith impose the appropriate punishment;

(b) that the officer should not be dismissed or reduced in rank but should be imposed with a lesser punishment, the Disciplinary Authority shall impose on the officer such lesser punishment as it deems fit and proper; or

(c) that the officer should not be imposed with any punishment, the Disciplinary Authority shall so decide.

[5] The submission is that reg. 38(g) as mentioned in the dismissal letter has no application in respect of reg. 33. The contention is as follows. Regulation 38 provides for a position where one of the range of punishments in reg. 38(g) can be

imposed when the disciplinary authority finds an officer guilty of an offence for infringement of any of the regulations. The second respondent was empowered to invoke reg. 38(g) only where it had the jurisdiction to make a finding of guilt against the officer concerned in respect of any offence against the regulations. The requirement of finding of guilt was a prerequisite before the power under reg. 38(g) to punish could be invoked. It was urged upon us that we should apply the decision in *Perbadanan Kemajuan Negeri Selangor Petaling Jaya, Selangor Darul Ehsan & Ors v. Perumal Manikam* [2000] 1 CLJ 745. Before referring to that case it is necessary to note that the dismissal letter itself has made a specific mention of reg. 37 (or Peraturan 37), reg. 37(1) of Regulations 1993 is by its express terms directly linked to reg. 33. The learned trial judge in addressing this matter observed:

> It follows that upon the Plaintiff's conviction on the criminal charge, then regulation 33 of the 1993 Regulations comes into play whereupon the Head of Department shall refer the matter to the Disciplinary Authority with the several recommendations in paragraph (a) to (d), ranging from no punishment at all to dismissal.
>
> Under regulation 37(1), the Disciplinary Authority, after considering the report and recommendation under regulation 33, may impose any of the punishments ranging from no punishment at all to dismissal.
>
> It is cannot be disputed that the letter of dismissal also makes reference to regulation 37. However, instead of dismissing the Plaintiff forthwith under regulation 37, the Disciplinary Authority dismissed him under the general penalty of regulation 38. The question arises whether such circumstances warrant this court to hold that the Plaintiff's dismissal is null and void because there has been an unfair procedure.

[6] It is in this context that the decision in *Perumal Manikam*'s case is different and hence inapplicable. In that case the Court of Appeal was clearly evaluating a position where a case of dismissal was effected pursuant to a provision that dealt not with dismissal, but with reduction of salary and hence it was clear that the disciplinary authority *vide* the dismissal letter has manifested non compliance with the relevant provisions of the then Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 which have since been superseded. In the instant appeal before us reg.

A 33 is an enabling provision where it is incumbent on a head of department to submit a recommendation to the relevant disciplinary authority in a situation where an officer has been convicted as a result of criminal proceedings. The contents of the dismissal letter indicate that the disciplinary authority acted in
B furtherance of reg. 37 that is the appropriate provision to impose the punishment of dismissal. It has also been submitted that reg. 33 does not give the disciplinary authority the jurisdiction to convict the officer concerned and that where an officer is convicted under reg. 33 only then reg. 37 applies. It is averred
C that the first respondent ought to have invoked the provisions of reg. 37. Two observations may be made. Firstly an erroneous interpretation has been rendered to the dismissal letter on behalf of the appellant for as indicated above the dismissal letter has already made a specific reference to reg. 37. Secondly the
D contention that the reference to reg. 38 in the dismissal letter amounts to the disciplinary authority acting without jurisdiction is without merit. The scope of regulations 1993 indicates that reg. 33 is only one of the provisions where the disciplinary authority is emplaced in a position to determine what is the appropriate
E punishment to impose. Implicit in reg. 33 is that the conviction and sentence imposed by a court of law by itself constitutes a breach of the code of conduct or in effect a misconduct.

[7] Regulations 1993 constitute the corpus of regulations
F promulgated to regulate the conduct and discipline of those serving in the public services. While reg. 38 uses the term "offence" and the words "... finds an officer guilty of contravening any of the provisions of these regulations" it is in substance a general description that in the event of the violation of any
G conduct laid down which amounts to an offence the relevant disciplinary authority under reg. 38 is generally vested with the power to exercise its discretion to make the appropriate determination on the form of punishment to be imposed befitting the circumstances of each contravention of the regulations. The
H question here is whether in its totality the disciplinary authority in this appeal has considered a matter and arrived at a decision in accordance with the procedure laid down by the Regulations 1993. Our response is that it is in the affirmative. The appellant has also failed in his allegation that the disciplinary authority has
I not purportedly directed itself to appreciate directory or mandatory

provisions found in the 1993 Regulations. In our view the reference to reg. 38 is mere surplus that does not constitute an error in jurisdiction or an absence of exercise of discretion.

[8] We also find it unnecessary and irrelevant to express any view on the principle of substantive fairness in the circumstances found in this appeal. This appeal is therefore dismissed with costs. The decision of the High Court is affirmed.